

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Jardel Corporation, d/b/a Delano's  
55-57 North Pleasant Street, Amherst, MA 01002

**Date application filed with the Town Clerk:** October 30, 2008

**Nature of request:** Special Permit to transfer ownership as per condition #29 of ZBA FY2009-00002 and condition #1 of ZBA FY1990-6.

**Address:** 55-57 North Pleasant Street (Map 14A, Parcel 47, B-G Zone)

**Legal notice:** Published on November 19 and November 26, 2008 in the Daily Hampshire Gazette and sent to abutters on December 3, 2008.

**Board members:** Barbara Ford, Hilda Greenbaum, Albert Woodhull

**Submissions:** The petitioner submitted a packet of information with the application including:

- Completed Application filed with the Town Clerk on October 30, 2008;
- A Management Plan titled Stacker's Pub Patio;
- A table of the proposed total seating capacity;
- A copy of the 11 x 17 site plan, floor plans and elevations prepared by Archimetrics Design Studio and which contains the ZBA stamp approval dated 9/3/08 for ZBA FY2009-00002;
- An undated, hand drawn floor plan showing the proposed seating, bar, kitchen and restrooms;
- A copy of ZBA FY1978-31, ZBA FY1979-32, ZBA FY1990-06, and ZBA FY2009-00002, submitted by staff.

**Site Visit:** December 16, 2008

The Board met with Tom Murphy of Stackers and Mrs. Delano at the site. The following was observed:

- The existing wood frame building situated on the east side of North Pleasant Street and bordered by Judies Restaurant to the south and the Monkey Bar restaurant and bar to the north;
- The existing façade fronting along North Pleasant Street containing an awning showing Delano's, a Pinocchio's menu board and various window signs covering the windows during renovation on the first floor, a small projecting sign for Delano's on the second floor and the remnant structural elements of a sign on the third floor;
- A narrow driveway on the north side of the building and the unfinished exterior wall along north side of the building;
- The newly installed patio surface at the rear of the building;

- The interior of the restaurant and bar area currently under renovation;
- The existing kitchen area and access points to the rear of the building towards the patio area.

**Public Hearing:** December 18, 2008

Tom Murphy introduced himself as the representative for Stackers Pub, his business partner and manager of Stackers Pub, Brian Stahl, the franchise owner of Pinocchio's On The Go and Harry Delano, the owner of Delano's and owner of the property.

Mr. Murphy stated that some of the documents submitted with the application had been revised and he distributed the new information to the Board, including:

- A full size copy of the floor plan prepared by Archimetrics Design Studio stamped received on December 18, 2008;
- A revised Management Plan stamped received on December 18, 2008;
- A narrative describing the sign plan concept;
- An updated Pinocchio's menu.

Mr. Murphy stated the following:

- Stacker's Pub will be running the alcohol/bar and Pinocchio's will be running the food service;
- Stacker's Pub will not be changed significantly from the Delano's establishment;
- The number of people in the building and on the patio will not exceed a maximum of 99 people;
- The maximum number of people allowed on the patio will be 24 people;
- The outdoor dining will be on private property;
- The number of employees will be 5-6 including 2 bartenders, 2 door staff and 2 kitchen staff and could be fewer during the day when we are less busy;
- The hours of operation are proposed to be from 11 a.m. to 1 a.m. seven days a week and all patrons are required to leave the premises by 1:20 a.m.;
- The hours apply to the bar and food service, including walk-in and take-out service; the delivery service, operated by Pinocchio's, will be from 10 a.m. from 2 a.m.;
- There will be no live music or entertainment; however, there will be a jukebox inside; there will be no music or speakers outside on the patio;
- Noise management will be monitored by a staff person/ security person on the patio from 8:30 p.m. to 1:20 a.m.;
- Trash and recycling will be handled by Amherst Trucking and the rubbish will be stored in the enclosure approved as part of the previous Special Permit;
- Stacker's Pub staff will be responsible for litter clean up inside, on the patio and around the entire premises, each day;
- Waste cooking oil will be stored in the same enclosure as the rubbish and will be picked up by Western Mass Renting;
- The vendors will deliver from the front and rear of the building as they have done in the past.

Mr. Murphy provided a summary of the operation of Stacker's Pub and Pinocchio's. He explained that people ordering food will go to the inside order window located next to the bar and kitchen. There will also be an order window for use by people on the patio which will be open when needed. Mr. Murphy stated that he has a working relationship with Mr. Brunelle, who has five (5) Pinocchio's franchises in the area, including one in Springfield at Mr. Murphy's pub establishment. He stated that they have been operating together for nearly two years and have been successful with the joint operation. At the other establishment people order food from a service window and then order any beverages from the bar. The lease with Mr. Delano includes a right of first refusal clause that allows Stacker's Pub to maintain the use of the kitchen and food service should Pinocchio's leave.

All delivery service will be conducted from the back door and all vehicles will utilize the municipal parking lot. The delivery personnel will have a work station in the basement of the building.

Stacker's Pub will be responsible for the sale of alcohol, checking ID's, and monitoring the premises. During the daytime hours the bartenders will conduct the monitoring; door staff will be monitoring the back door and patio gate whenever the patio is open from 8:30 p.m. to closing seven days a week or earlier for any special occasions.

Mr. Murphy stated that he prefers to have all patrons enter the bar and patio through the door on North Pleasant Street for the purposes of monitoring ID's with a scanner device. Patrons can exit the patio through the gated entrance until 9:00 p.m.

Mr. Murphy also discussed the signs under consideration. He noted that they have not submitted a formal sign plan yet, as they are waiting for pricing from a sign company. Mr. Murphy explained that they are considering a small, 5' x 3' sign, similar to the menu sign currently on the street side façade adjacent to the entry door way. Mr. Murphy noted the requirements of the Town that limit signs to no more than 10% of the façade.

Ms. Greenbaum asked if they would be removing the lighted Delano's sign on the second floor. Mr. Murphy indicated that they would be interested in keeping the sign structure and replacing the lettering. Mr. Murphy added that the sign is useful because it can be seen by people walking on the sidewalk on North Pleasant Street.

Mr. Murphy stated that they will likely replace the canvas on the awning. He added that they are unsure whether they would include any writing on the awning, but noted that any writing on the awning would be included in the total sign area allowed. He added that the signs would be presented to the Design Review Board and then be brought to the Zoning Board of Appeals. Ms. Weeks stated that the awning must be fire rated and could affect the color choices available.

Mr. Woodhull referenced the occupancy calculations and asked the applicant if the space is large enough to have up to 99 people inside the building. Mr. Woodhull commented on the management plan which indicated that people leaving the patio, until 9:00 p.m., might alter the count taken at the front door.

Mr. Murphy stated that he understood the concern and that in his experience it is not likely that the bar would be at or near capacity at 9:00 p.m. and that door staff would be monitoring and tracking any patrons leaving the patio area.

Ms. Ford asked the applicant to clarify when door staff will begin monitoring the doors and noted that the previous Special Permit stated that monitoring would begin at 8:00 p.m. and that the new management plan stated that monitoring would begin at 9:00 p.m. Mr. Murphy indicated that door staff will begin monitoring the door from 8:00 p.m. to 1:30 a.m.

Ms. Ford asked the applicant to clarify the extent of litter control and if it will include the alleyway. Mr. Murphy indicated that staff will check and clean the property daily and will include the sidewalk and alleyway.

Ms. Ford asked the applicant to clarify where the patrons will order and pick up food, including those patrons on the patio. Mr. Murphy stated that it will be self serve and will not have wait staff. He added that all patrons will order food from the same order window located inside. Patrons eating on the patio will only pick up the food orders from the window located on the patio. All patrons receiving alcohol will go to the bar to order and receive drinks. Mr. Murphy indicated that they may utilize a system, such as buzzers, to be given to patrons and that buzz when a food item is ready.

Ms. Greenbaum asked the applicant how food service would be handled if Pinocchio's were to vacate the kitchen. Mr. Murphy indicated that if Pinocchio's chose to leave, Stacker's Pub has written into the lease the right of first refusal for use of the kitchen. He added that both Stacker's Pub and Pinocchio's are leasing from Mr. Delano, who owns the building.

Mr. Woodhull asked if the food use requires the bar use and asked if Pinocchio's should be applying for its own Special Permit. The Board determined that two separate businesses, Stacker's Pub and Pinocchio's On The Go could constitute a Class II restaurant and that would operate according to the submitted Management Plan.

Ms. Weeks stated that Stacker's Pub cannot operate without food service and the Board should identify what happens if one of the businesses leaves. The Board discussed possible conditions on the permit if the operation of the restaurant changes, including:

- Expiration upon change of management or ownership of either business;
- Expiration if the Stacker's Pub vacates the premises, changes ownership, or changes management;
- Return at a public meeting if Pinocchio's leaves and someone continues to operate the kitchen.

The Board discussed the number of employees, including:

- Whether the total number of employees must be specified;
- Whether the minimum number of staff would need to be specified;
- Whether the permit should specify the number of employees to include any future wait-staff or additional employees where the occupancy does not exceed 99 people.

The Board discussed the delivery drivers for Pinocchio's On The Go. Mr. Murphy indicated that the drivers would have a small work station in the basement. Ms. Weeks indicated that if the delivery personnel were on the first floor, they would be included in the total occupancy count.

Ms. Weeks stated the interior service window is also an exit door for the kitchen. The kitchen is required to have two means of egress and the location of the service window may need to be changed.

The Board reviewed the submitted floor plans and determined that the plan was different from the floor plan approved by the Board as part of ZBA FY2009-00002. The Board determined that the applicant should submit a revised plan that shows the proposed table arrangement, location of the door from the kitchen to the bar, the additions to the rear of the building and patio for review by the Board.

The Board determined that the applicant should revise the management plan for review by the Board.

Ms. Ford asked the Board members if they objected, in principle, to the application. There were no objections. The Board determined that they may wish to keep the hearing open and further discuss and prepare conditions at the continued public hearing.

Ms. Ford moved to continue the Public Hearing to January 15, 2009. Ms. Greenbaum seconded the motion and the Board voted unanimously to continue the Public Hearing to January 15, 2009.

**Continued Public Hearing:** January 15, 2009

For the continued Public Hearing, Tom Murphy provided the following information to the Board:

- A color copy of the 11x17 plans, stamped received on January 15, 2009 and previously approved by the Board as part of ZBA FY2009-00002 showing the proposed interior seating arrangement and egress from kitchen to bar area;
- A copy of a preliminary floor plan sketch of the basement, including office for delivery personnel and two means of egress;
- A revised Management Plan stamped received on January 15<sup>th</sup>, 2009.

The representative for Stackers Pub, Tom Murphy, was accompanied by his business partner and manager of Stackers Pub, Brian Stahl and Mrs. Delano.

Mr. Murphy stated the following:

- The floor plan now shows the interior seating arrangement; each table will be a high table with stools;
- The floor plan shows the egress from the kitchen to the bar area and the back door egress from the kitchen;
- The back door to the kitchen and basement will be utilized by all employees, including delivery personnel;

- The number of employees was changed on the Management Plan and is now based on business needs. All of the employees, including delivery personnel will be included in the total allowed occupancy;
- The delivery personnel will use the back door going to the kitchen and they will have an office in the basement, as shown on the plans.

Ms. Ford confirmed that there is no barrier separating the seating area from the bar area and that the plan shows a separation line that was previously used for occupancy calculations.

Ms. Greenbaum made a motion to close the evidentiary portion of the Public Hearing. Mr. Woodhull seconded the motion and the Board voted unanimously to close the Public Hearing.

**Public Meeting:**

The Board spent the remainder of the time during the public meeting discussing conditions for granting the Special Permit.

**Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses. The restaurant is located in the mixed-use downtown business district with numerous other restaurants with outdoor dining and alcohol service in the immediate neighborhood.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site. A series of fences in the back of the property conditions restricting music on the patio will mitigate noise. The patio will be gated and monitored by staff, and the number of customers on the patio will be limited to 24 people. The permit organizes and clarifies several previously existing uses on the property, reducing confusion and allowing clearer management and enforcement.

10.383, 10.384 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians; the proposal also provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets. A former driveway will become a walkway, no parking will be allowed on the site, and the outdoor dining will be contained within a fenced area.

10.386 – The proposal is in conformance with the Sign and Parking regulations of the town. Any future sign changes must be submitted to the Design Review Board and approved by the Zoning Board at a public meeting. The restaurant is located in the Municipal Parking District, where a number of uses, including restaurants, are not required to provide parking.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes. The property is connected to Town water/sewer, and the approved Management Plan provides for adequate refuse/recyclable disposal. A shed dedicated to refuse/recycling storage will be built and located in the northeast corner of the property away from the patio.

10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential uses. The approved site plan requires several new evergreen and deciduous trees, as well as other plantings. The permit requires that the landscaping be permanently maintained.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting. All new outdoor lighting will be downcast to prevent off-site or skyward pollution.

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity. The building renovations and design of the patio and landscaping have been reviewed by the Design Review Board and are consistent with the character, design and massing of the downtown business area. The proposed improvements will significantly enhance the property and the downtown area.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw. Approval of this permit organizes and clarifies the previously existing uses on the property, reducing confusion and allowing clearer management and enforcement. The proposal will protect the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst by better organizing existing uses on-site, by limiting the number of occupants inside and outside of the building, and by removing parking from pedestrian walkways.

**Public Meeting - Zoning Board Decision:**

Ms. Greenbaum made a motion to APPROVE the application with conditions. Mr. Woodhull seconded the motion.

For all the reasons above, the Board VOTED unanimously to grant a Special Permit, for the transfer of ownership of Delano's as per condition #1 of ZBA FY1990-6 and condition #29 of ZBA FY2009-00002 from Jardel Corporation d/b/a Delano's to Mugsy's Pub Inc., and for continued operation of a Class II restaurant, to be known as Stacker's Pub, serving alcohol under Section 3.352.1, with outdoor dining under Section 5.041 and food delivery service by Pinocchio's On The Go, at 55-57 North Pleasant Street (Map 14A, Parcel 47, B-G Zone), with conditions.

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BARBARA FORD

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HILDA GREENBAUM

\_\_\_\_\_  
ALBERT WOODHULL

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2008 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.  
TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2008.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2008  
to the attached list of addresses by \_\_\_\_\_, for the Board.  
NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2008,  
in the Hampshire County Registry of Deeds.

Town of Amherst  
Zoning Board of Appeals

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit, for the transfer of ownership of Delano's as per condition #1 of ZBA FY1990-6 and condition #29 of ZBA FY2009-00002 from Jardel Corporation d/b/a Delano's to Mugsy's Pub Inc., and for continued operation of a Class II restaurant, to be known as Stacker's Pub, serving alcohol under Section 3.352.1, with outdoor dining under Section 5.041 and food delivery service by Pinocchio's On The Go, at 55-57 North Pleasant Street (Map 14A, Parcel 47, B-G Zone), with the following conditions:

1. This Special Permit shall supersede all previous permits associated with the property.
2. The interior seating, building alterations, patio, fencing, lighting and plantings shall be made according to the plans approved by the Board at a public meeting on September 3, 2008 and amended and approved on January 15, 2009.
3. The indoor/outdoor establishment and the delivery service shall be managed according to the Management Plan as approved by the Board on January 15, 2009.
4. The number of persons at the restaurant, indoor and out, patrons and staff shall not exceed ninety-nine (99) at any time.
5. Food shall be available at all times when alcohol is available.
6. The maximum number of customers allowed to occupy the patio at any given time shall be limited to twenty-four (24).
7. The hours of operation for the indoor restaurant, patio and take-out shall be 11:00 a.m. to 1:00 a.m. seven days per week.
8. The hours of operation for the delivery service shall be between the hours of 10 a.m. and 2 a.m.
9. Diners may enter and exit the patio from the outdoor gate until 9 p.m. After 9 p.m., management shall require all patrons, indoors or out, to exit year-round from the front of the building.
10. All patrons, including those on the patio, shall be required to order food from the interior order window. Management shall require that all patio patrons receive food orders from the order pick up window on the patio and all beverages at the interior bar.
11. Management shall require indoor patrons to enter and exit the building from North Pleasant Street only.
12. There shall be no fewer than three (3) on-site staff during the normal business hours of the restaurant and bar area.
13. There shall be a staff person monitoring the back exit and the patio gate whenever the patio is open from 8:00 p.m. until closing seven days per week. If needed, a monitor shall be stationed at each entrance/exit at a time earlier than 8:00 p.m.
14. All employees who serve alcohol, including the restaurant manager, shall be appropriately trained and certified in ServeSafe or comparable alcohol service courses.
15. Delivery service personnel shall be directed to pick-up deliveries from the back door to the kitchen.



16. Delivery service personnel shall be required to park vehicles off-site.
17. There shall be no live music permitted within the restaurant. Recorded music will be permitted within the restaurant, but its volume shall be controlled such that the music is not audible outside the building.
18. There shall be no live or recorded music played outdoors on the patio.
19. Noise emanating from the patio shall be no louder at the property boundary than the ambient noise in the area.
20. Outdoor dining shall cease, and outdoor furniture shall be removed and stored, between November 1<sup>st</sup> and April 1<sup>st</sup>.
21. The management shall require vendor deliveries to the restaurant to be made at the front or rear of the building during normal business hours.
22. There shall be no parking permitted in the alleyway; except for emergencies or repairs, the management shall keep the alleyway open and unobstructed for pedestrian use at all times.
23. The management shall keep the area surrounding the restaurant, including the public sidewalk and alley, clear of litter at all times.
24. Refuse/recycling shall be stored in the trash enclosure as shown on the approved site plan and removed according to the Management Plan.
25. The management shall not serve or permit patrons to congregate on the property outside the patio. The conduct of patrons waiting outside on North Pleasant Street to enter the establishment shall be supervised by staff.
26. There shall be no disposable plates, glasses or utensils used for the outdoor dining.
27. Patio fencing shall be approximately four (4) feet high, and rear fencing shall be six (6) feet high as shown on the approved site plan.
28. The fencing, as shown on the plans approved January 15, 2009, shall be installed prior to the use of the outdoor patio area and shall be permanently maintained thereafter.
29. The landscaping and plantings, as shown on the plans approved January 15, 2009, shall be installed by June 30, 2010 and permanently maintained thereafter.
30. Any changes to existing signs, any new signs or changes to the fencing varying from that approved by the Board shall be submitted to the Design Review Board for review and to the Zoning Board of Appeals for approval at a public meeting.
31. If either business is leased or undertakes any departure from the approved Management Plan, including but not limited to, Pinocchio's no longer preparing food for the restaurant, a new Management Plan shall be submitted to the Zoning Board of Appeals for review and approval at a public meeting.
32. This permit shall expire upon the closing of Stacker's Pub or upon any change of ownership of the business known as Stacker's Pub or Mugsy's Pub Inc.

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Barbara Ford, Chair  
Amherst Zoning Board of Appeals

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DATE